

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

REC'D. 21 OCT 2004

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Applicant's or agent's file reference P14084PCDK	FOR FURTHER ACTION		See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)
International application No. PCT/DK 03/00749	International filing date (day/month/year) 01.11.2003	Priority date (day/month/year) 04.11.2002	
International Patent Classification (IPC) or both national classification and IPC A61M15/00			
Applicant BANG & OLUFSEN MEDICOM A/S et al.			

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 4 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:

I ☒ Basis of the opinion

II ☐ Priority

III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability


IV ☒ Lack of unity of invention

V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

VI ☐ Certain documents cited

VII ☐ Certain defects in the international application

VIII ☐ Certain observations on the international application

Date of submission of the demand 02.06.2004	Date of completion of this report 20.10.2004
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Lager, J Telephone No. +49 89 2399-2957



**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/DK 03/00749

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-39 as originally filed

Claims, Numbers

1-16 as originally filed

Drawings, Sheets

1/9-9/9 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. **PCT/DK 03/00749**

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).
(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)
6. Additional observations, if necessary:

IV. Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees, the applicant has:
- ☐ restricted the claims.
 - ☐ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☒ neither restricted nor paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is
- ☐ complied with.
 - ☐ not complied with for the following reasons:
4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:
- ☐ all parts.
 - ☒ the parts relating to claims Nos. 1-2,7-10,14-16 .

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-2,7-10,14-16
	No: Claims	
Inventive step (IS)	Yes: Claims	1-2,7-10,14-16
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-2,7-10,14-16
	No: Claims	

2. Citations and explanations

see separate sheet

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/DK 03/00749

Section IV.

1. The PCT examining authority agrees with the ISA that the application lacks unity, Rule 13 PCT.
 - 1.1 The examining authority agrees on the basis of the reasoning already forwarded to the applicant during the search stage in Form PCT/ISA/206.
2. Since the applicant decided not to answer within the given time limit the first set of claims (i.e. claims 1-2, 7-10 and 14-16) was examined under Article 33(1) PCT.

Section V.

1. The closest prior art is commented upon in the introductory portion of the description. The two part form of claim 1 is delimited against this known state of the art.
 - 1.1 The inhaler device of claim 1 differs therefrom in that it comprises a yoke which is connected to a lever arm and to a dose counting mechanism.

Such a device appears not to be derivable from the available prior art although the documents cited in the search report disclose parts of claim 1 without disclosing any hints to an obvious combination of the different teachings. In particular, none of the available documents, taken on their own or in combination, disclose yoke means, activated by a lever arm, connectable to the bottom of a canister and to a counter.

The device defined in claim 1 enables a more accurate dispensing of medicament and dose counting due to better controlled gearing between the features.

- 1.2 Claim 1 appears therefore to fulfil the requirements of Article 33(2)-(3) PCT.
2. Dependent claims 2, 7-10 and 14-16 define preferred embodiments of the device of claim 1.
3. Claims 1-2, 7-10 and 14-16 appear to fulfil the requirements of Article 33(2)-(4) PCT.